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It appears that Government has taken over the obligations of the Shiletrees to repair the bunds protecting the khar lands in Kolaba District. For a number of years Government levied cess for repairing such bunds but later discontinued doing so for reasons which are not apparent from the record. About the year 1925 Government attempted to revive its right to levy the cess by resort to certain provisions of the Land Revenue Code. This attempt was opposed by the owners of the khar lands and ultimately three suits were filed. The result of the litigations was that the levy of the cess was declared illegal. The consequence of all this is that the Khar lands have suffered in productivity. To improve their productivity it is now proposed to take action under the Bombay Land Improvement Schemes Act, 1942. The question referred to the R.L.A. for consideration are:-

(1) Whether in view of the history of the case Government is still legally liable for maintaining the bunds in good repair;

(2) Whether a scheme can be legally framed under the Land Improvement Schemes Act for maintenance and repair to the these bunds defining clearly the extent of liability of the occupant and of Government enforced under the Act.

Question (1). It appears from the papers underlying the suits Nos.4/1930, 180/1930 and 181/1930 that Government did not dispute its liability to repair the bunds. In fact, while admitting such liability Government claimed reimbursement in the shape of a levy of cess. Government's right to levy the cess was however rejected by the courts and that decision has been acquiesced in. In the circumstances, Government is still illegally liable for repairs to the bunds.

Question (2).- Under section 4(1) of the Bombay Land Improvement Schemes Act, 1942, a scheme for any area within the jurisdiction of the Board can be framed, inter alia, for the following purposes:-

(i) preservation and improvement of soil;

(ii) prevention of erosion of soil;

(iii) improvement in the methods of cultivation;

(iv) reclamation of waterlogged land or of land from the sea.

It is not clear what kind of improvement scheme is contemplated for the khar lands. But it would appear from the question referred to the R.L.A. for consideration that the Land Improvement Schemes Act is proposed to be applied for the purpose of maintaining and repairing the bunds. If that is the only object in view it would seem unnecessary to apply the Land Improvement Act as the legal liability to maintain and repair the bunds rests solely on Government. The bunds are already in existance and it will not be legally feasible transfer the liability to maintain and repair the bunds from Government to the owners of the lands by the dubious device of applying the Land Improvement Scheme Act to such lands.

Id/- P.N.M.
22/6/45.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4723 , dated the 23rd June 1945.

SNT/6.7.

Office of the R.L.A.

In case where Government directs the preparation of a scheme under section 25 of the Bombay Land Improvement Schemes Act, 1942, the following prodedure should be followed:

(i) Government should make a declaration that in the area a state of fimine or scarcity prevails or a state of famine or scarcity is likely to prevail or land improvement is necessary in the interest of any members of His Majesty's forces whether in services or retired, or of their dependents

(ii) direct the preparation of land improvement scheme in that area.

(iii) appoint a person to prepare in accordance with the instruction as Government may issue a draft scheme containing the particulars specified in section 4(2),

(iv) direct that the draft thus prepared should be kept for inspection in the village and at the head-quarters of the taluka or mahal within the limits of which the lands proposed to be included in the scheme are situated,

(v) and publish a general notice in the Bombay Government Gazette and in local newspapers as provided in section 5(2).

(vi) After expiry of thirty days from the date of such publication the Board should appoint an Inquiry Officer who should proceed to inquire into the claims and objections, if any, which may be made or submitted by any persons and shall hear and decide any other matter which may be required to be heard and decided by or under the provisions of this Act.

(vii) After the under sub-section (2) is over the Inquiry Officer should make a report to

Government through the Collector and the Board

(viii) and Government may sanction the scheme with or without any modification.

(ix) After the scheme is sanctioned by Government the provisions of sections 10 to 23 and the rules made under section 24 will apply to it.

If the procedure prescribed by sub-section (1) and (2) of section 25 is followed in respect of schemes in four villages viz. Mortaji, Yergal, Shindgi in Shindgi Taluka and Horti in Indi Taluka, there is no legal objection to Government sanctioning those schemes under sub-section (3)

In respect of the schemes in other villages the procedure prescribed by sub-section (1) to (3) of section 25 will have to be strictly followed. Section 25A has no application to the preparation of schemes

Id/- P.N.M.
15/8/45.

Remembrancer of Legal Affairs.

U.R. to R.C.D., No. 6112, dated the 18th August 1945.

SNT/6.7.